



UNITED STATES
PATENT AND
TRADEMARK OFFICE

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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13

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FOR REQUESTER

In re Proctor
Reexamination Proceeding
Control No.: 90/005,892
Filed: December 20, 2000
For: U.S. Patent No. 5,894,079

: DECISION RETURNING
: IMPROPER PAPER

In re Proctor
Reissue Application
Serial No. 09/773,303
Filed : January 31, 2001
For: U.S. Patent No. 5,894,079

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The letter filed August 28, 2001, is before the Group Director of Examining Group 1600/2900. The letter is addressed to the merged reexamination/reissue proceedings as indicated in the decision merging the reexamination and reissue files, mailed June 13, 2001. The letter clearly indicates that reissue rules control in the merged proceeding. While a protest by a third party under 37 CFR 1.291 is permitted in a reissue application (or merged proceeding) the letter does not qualify as a protest and therefor is an improper paper.

The letter is also an improper papers under the reexamination rules (37 CFR 1.550(e)) as the third party requester has no entry rights in the examination of a reexamination proceeding. The only possible right is conditioned on a patent owner reply to the order granting reexamination which did not occur in the above identified reexamination proceeding prior to merger with the reissue application. Nor can the filing of the reissue application be considered a patent owner reply in any sense since it was filed prior to the order granting reexamination.

The letter is being returned as improper under both reissue and reexamination rules.

John Doll
Director, Technology Center 1600